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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Alfonzo Smith,

Plaintiff / Counter-Defendant,

v.

FCA US LLC,

Defendant / Counter-Plaintiff.

No. CV-13-01732-PHX-NVW

ORDER

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1 Before the Court are Plaintiff's Motion for Summary Judgment on Liability (Doc.
2 165), Defendant's Motion for Summary Judgment (Doc. 134), and the parties'
3 accompanying statements of facts and briefs.¹ For the reasons that follow, Plaintiff's
4 motion will be granted in part and denied in part, and Defendant's motion will be denied.

5 6 **I. INTRODUCTION**

7 In 2002, Alfonzo Smith became general manager and part owner of a Chrysler-
8 brand dealership. Chrysler owned the rest of the dealership's stock. Smith and Chrysler
9 agreed that Smith would gradually purchase the remaining stock from Chrysler, so that he
10 could become the dealership's full owner. Chrysler retained all voting rights in the
11 dealership until Smith purchased all the stock.

12 In 2012, Chrysler terminated Smith's involvement in the dealership. Smith had
13 acquired most, but not all, of the dealership's stock.

14 Smith claims Chrysler's termination violated the common-law duty of good faith
15 and fair dealing as well as federal and state statutes protecting automobile dealers.²
16 Chrysler claims there was no bad faith and that the statutes protecting automobile dealers
17 do not apply to Smith. Both parties seek summary judgment.

18 19 **II. LEGAL STANDARD**

20 A motion for summary judgment tests whether the opposing party has sufficient
21 evidence to merit a trial. Summary judgment should be granted if the evidence reveals no
22 genuine dispute about any material fact and the moving party is entitled to judgment as a
23 matter of law. Fed. R. Civ. P. 56(a). A material fact is one that might affect the outcome of
24 the suit under the governing law, and a factual dispute is genuine "if the evidence is such that

25 ¹ Many documents in this case, including Plaintiff's Motion, have been filed under
26 seal to protect confidential information.

27 ² After Smith filed this action, Defendant changed its name from Chrysler Group
28 LLC to FCA US LLC. (Doc. 70.) Because all relevant events occurred before this name
change, Defendant will be referred to as "Chrysler" throughout this order.

1 a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty*
 2 *Lobby, Inc.*, 477 U.S. 242, 248 (1986).

3 The movant has the burden of showing the absence of genuine disputes of material
 4 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). However, once the movant shows
 5 an absence of evidence to support the nonmoving party’s case, the burden shifts to the party
 6 resisting the motion. The party opposing summary judgment must then “set forth specific
 7 facts showing that there is a genuine issue for trial” and may not rest upon the pleadings.
 8 *Anderson*, 477 U.S. at 256. To carry this burden, the nonmoving party must do more than
 9 simply show there is “some metaphysical doubt as to the material facts.” *Matsushita Elec.*
 10 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

11 In deciding a motion for summary judgment, the Court must view the evidence in the
 12 light most favorable to the nonmoving party, must not weigh the evidence or assess its
 13 credibility, and must draw all justifiable inferences in favor of the nonmoving party. *Reeves*
 14 *v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000); *Anderson*, 477 U.S. at 255.
 15 Where the record, taken as a whole, could not lead a rational trier of fact to find for the
 16 nonmoving party, there is no genuine issue for trial. *Matsushita*, 475 U.S. at 587.

17 18 **III. MATERIAL FACTS**

19 The following facts are drawn from Plaintiff’s Statement of Facts and exhibits
 20 (Doc. 166), Defendant’s Statement of Facts and exhibits (Docs. 135, 150, 151, 152), and
 21 the parties’ pleadings (Docs. 19, 48, 50.). The facts are undisputed except where
 22 otherwise noted.

23 **A. Smith’s Relationship with Chrysler Before Arizona**

24 In 1981, Smith acquired a Chrysler-brand dealership in Virginia. (Doc. 135 at
 25 ¶ 9.) He paid for the acquisition himself, after borrowing money and selling personal
 26 assets. (*Id.* at ¶ 10.) He was the dealership’s sole owner. (*Id.* at ¶ 13.)

27 In 1984 or 1985, Smith decided he wanted a larger Chrysler-brand dealership in
 28 Virginia. (*Id.* at ¶¶ 14-15.) Rather than pay for the acquisition himself, he used

1 Chrysler's "Marketing Investment" program. (*Id.* at ¶¶ 16-17.) Under the program,
2 Smith contributed 25% of the required capital, while Chrysler contributed the remaining
3 75%. (*Id.* at ¶ 18.) Smith acquired common stock in the dealership, and Chrysler
4 controlled the voting stock. (*Id.* at ¶¶ 21-22.)

5 **B. Smith's Relationship with Chrysler in Arizona: Contracts and Policies**

6 In 2002, Smith took advantage of the Marketing Investment program again, this
7 time in an effort to acquire a Chrysler-brand dealership in Arizona named Superstition
8 Springs Chrysler Jeep Inc. ("the Arizona dealership"). (Doc. 166 at ¶¶ 2-4.)

9 To apply, Smith submitted an "Application for Dealer Agreement" to Chrysler on
10 March 25, 2002. (Doc. 166-2.) On the application Smith provided personal information
11 such as his name, education, business experience, references, financial assets and
12 liabilities, and credit score. (*Id.* at 2-5, 8.) In response to the question of who would
13 manage the proposed dealership, he wrote "I will, Alfonzo Smith." (*Id.* at 5.) Upon
14 receipt of Smith's application form, Chrysler's National Dealer Placement Manager
15 requested a "Dealer Background Report" on Smith. (*Id.* at 28.)

16 At some point Smith also sent to Chrysler a form letter asking to be employed as
17 the Arizona dealership's General Manager. (Doc. 135-14.) There is no date on the letter.
18 (*Id.*) The parties dispute whether this letter was sent during the application process or
19 after Smith had already entered the Marketing Investment program. (*Compare* Doc. 135
20 at ¶ 32 *with* Doc. 168 at ¶ 32.)

21 In any event, Chrysler accepted Smith's application. (Doc. 166 at ¶ 4.) The
22 resulting arrangement between Chrysler and Smith was created by three sets of contracts.
23 Smith's managerial role at the Arizona dealership was governed by more specific
24 policies.

25 **1. Contract between Chrysler and the Arizona dealership**

26 The first contract was executed by Chrysler and the Arizona dealership on June 5,
27 2002. (Doc. 135-16.) It lists Chrysler and Smith as the dealership's shareholders. (*Id.* at
28 3, 7.) It assigns Chrysler the dealership's voting stock and assigns Smith the dealership's

1 non-voting stock. (*Id.*) It ensures “there will be no change affecting more than 50% of
2 the ownership interest,” nor any change in ownership interest which may affect the
3 dealership’s “managerial control,” without Chrysler’s “prior written approval.” (*Id.*)

4 The contract also lists Smith and one other employee as the dealership’s managers.
5 (*Id.* at 2, 6.) It labels Smith “General Manager” and the other employee “President.”
6 (*Id.*) It states Chrysler “has entered into this Agreement relying on the active, substantial
7 and continuing personal participation” of these managers and prevents the dealership
8 from changing management “personnel” or “the nature and extent of [their] management
9 participation” without Chrysler’s “prior written approval.” (*Id.* at 2-3, 6-7.)

10 The contract’s introduction states Chrysler “has entered into this Agreement in
11 reliance upon and has placed its trust in the personal abilities, expertise, knowledge and
12 integrity of [the dealership’s] principal owners and management personnel, which
13 [Chrysler] anticipates will enable [the dealership] to perform the personal services
14 contemplated by the Agreement.” (*Id.* at 2, 6.) Throughout the contract, the Arizona
15 dealership is referred to as “DEALER.” (*Id.*)

16 A newer version of the contract was executed in 2009. (Doc. 135-17.) The
17 provisions are materially identical. (*Compare* Doc. 135-16 with Doc. 135-17.) The 2009
18 version contains what appears to be a typographical error, listing Smith as owning the
19 voting stock and Chrysler as owning the non-voting stock. (Doc. 135-17 at 3, 7, 11.)

20 **2. Contract between the Arizona dealership and Smith**

21 The second contract was executed by the Arizona dealership and Smith on June
22 11, 2002. (Doc. 135-18.) It provides that the dealership will pay Smith a salary, set by
23 the dealership’s Board of Directors, as well as an annual bonus of 25% of the dealership’s
24 annual profit. (*Id.* at 2-3.)

25 The contract also contains an at-will employment clause. (*Id.* at 4.) The clause
26 states that Chrysler has the “absolute right,” as the dealership’s sole voting stockholder,
27 to remove Smith as a Director and employee of the dealership. (*Id.*) Smith signed his
28 initials next to this clause and signed at the end of the contract. (*Id.*)

1 A newer version of the contract was executed in 2003. (*Id.* at 6-8.) The
2 provisions are materially identical. (*Compare* Doc. 135-18 at 2-4 *with* Doc. 135-18 at
3 6-8.)

4 3. Contract between Chrysler and Smith

5 The third contract was executed by Chrysler and Smith on June 11, 2002. (Doc.
6 135-19.) It states Chrysler purchased 9,500 voting shares in the dealership for \$950,000
7 and Smith purchased 500 non-voting shares in the dealership for \$50,000. (*Id.* at 2.)

8 The contract requires Smith to spend at least half of, and no more than, his annual
9 bonus each year to purchase Chrysler's shares at a price of \$100 per share. (*Id.* at 3.) It
10 further provides that once Smith buys a share from Chrysler, the share becomes non-
11 voting; thus, as long as Chrysler has any shares, it has the only voting shares. (*Id.* at 3,
12 7.) It also prohibits Chrysler from issuing or converting additional shares. (*Id.* at 7.)

13 The contract further provides that if Smith ceases to be General Manager for any
14 reason, his rights to purchase stock will terminate and Chrysler will either (1) buy back
15 Smith's then-acquired stock at book value or (2) dissolve the dealership, liquidate its
16 assets, and distribute the proceeds to the shareholders. (*Id.* at 3-4.) The last page of the
17 contract contains a Michigan choice-of-law clause. (*Id.* at 10.)

18 A newer version of the contract was executed on September 30, 2003. (*Id.* at
19 11-24.) According to a letter from Chrysler to Smith dated September 18, 2003, the
20 newer version was necessary because Smith had acquired 25% of the dealership's total
21 equity. (Doc. 166-3 at 2.) Thus, the 2003 version of the contract contains revised figures
22 on the shares owned by the respective parties: Chrysler owned 9,583 voting shares
23 because it invested \$958,300, and Smith owned 3,142 non-voting shares because he
24 invested \$314,200. (Doc. 135-19 at 11.) The September 18 letter to Smith concluded:
25 "We extend our congratulations to you for achieving this milestone and look forward to
26 working with you to achieve your end objective of 100% ownership." (Doc. 166-3 at 2.)
27
28

4. Managerial policies

In addition to the three sets of contracts described above, Smith's role as General Manager was governed by two documents: Chrysler's Marketing Investment Financial and Operating Policies (Doc. 150-4) and Dealership Secretary-Treasurer's Guide (Doc. 150-5.) These documents outlined the contours of Smith's managerial authority, requiring him to manage in certain ways and prohibiting him from managing in other ways. (*See* Doc. 135 at ¶¶ 51-65.) In particular, Smith was required to report to the dealership's Board of Directors periodically and to obtain approval by the Board before taking certain actions. (*See id.* at ¶¶ 56, 58, 67-72.)

The parties dispute whether these policies actually limited Smith's managerial authority in a meaningful way. (*Compare* Doc. 135 at ¶ 66 (characterizing policies as imposing "close oversight") *with* Doc. 168 at ¶ 66 (characterizing policies as imposing "little oversight").)

C. Smith's Relationship with Chrysler in Arizona: the Circumstances

Upon Chrysler's agreement to help finance Smith's acquisition of the Arizona dealership via the Marketing Investment program, Smith moved his family from Virginia to Arizona. (*See* Doc. 166 at ¶ 5.)

For the first several years, the Arizona dealership was profitable and Smith used portions of his annual bonuses to buy more of Chrysler's shares. (Doc. 166 at ¶ 16; Doc. 173 at ¶ 16.) Starting in 2007, however, dealership sales fell dramatically. (Doc. 166 at ¶¶ 19-20.) During this time, the dealership had difficulty obtaining a working capital loan. (*Id.* at ¶¶ 21-26.) But in 2011 and 2012, the dealership became profitable again. (*Id.* at ¶¶ 27-29.)

On June 16, 2012, Chrysler senior manager Mitch Mitchell emailed Smith, requesting that he submit a plan for completing his purchase of Chrysler's stock by March 31, 2013. (Doc. 166-18 at 2.) This email was the first time Smith was made aware of a deadline as to his stock purchases. (Doc. 166 at ¶ 32.) The email stated that this stock buyout option would be available only if Smith could increase dealership sales

1 to meet certain Minimum Sales Requirements. (Doc. 166-18 at 2.) The email further
2 stated that if Smith were to fail to purchase all of Chrysler's stock by March 31, 2013,
3 Chrysler "may exert its right to terminate [his] status as a general manager under this
4 program and proceed with terminating [his] interest in the dealership." (*Id.*)

5 Despite this warning, Smith thought he would be able to meet the Minimum Sales
6 Requirements and purchase Chrysler's remaining stock in the dealership by the deadline.
7 (Doc. 166 at ¶ 34.)

8 On October 4, 2012, Mitchell sent Smith another email explaining the steps
9 necessary to purchase Chrysler's remaining stock and pointing out that Smith had so far
10 achieved only 71.2% of the Minimum Sales Requirements. (Doc. 166-22 at 2.) The
11 parties dispute whether Chrysler usually views Minimum Sales Requirements as general
12 guidelines or strict requirements. (*Compare* Doc. 166 at ¶ 31 *with* Doc. 135 at ¶ 84.)

13 On October 29, 2012, Mitchell terminated Smith as General Manager and as a
14 Director of the dealership without prior written notice. (Doc. 166 at ¶ 43.) At that time
15 Mitchell also gave Smith an agreement to sign, which stated he was terminated and
16 purported to offer him the audited book value of his investment in the Dealership. (Doc.
17 48 at ¶¶ 28-29, Doc. 50 at ¶¶ 28-29.) Smith declined to sign. (Doc. 48 at ¶ 30; Doc. 50 at
18 ¶ 30.)

19 At the time of his termination Smith owned most of the dealership's stock,
20 although the parties dispute exact figures. (*Compare* Doc. 166 at ¶ 44 (asserting Smith
21 owned 68.5% of the stock) *with* Doc. 173 at ¶ 44 (asserting Smith owned 59.7% of the
22 stock).)

23 Chrysler has identified several reasons why it terminated Smith in addition to his
24 low sales and slow stock purchase. (*See* Doc. 135 at ¶¶ 88-100.) These include his
25 failing to take care of cars on his lot, valuing vehicles incorrectly, and violating
26 Chrysler's conflict-of-interest policy. (*See id.*) Smith disputes both the genuineness and
27 underlying factual accuracy of these alleged reasons. (*See* Doc. 166 at ¶¶ 88-100.)
28

1 **D. Smith’s Response to Termination**

2 To challenge his termination, Smith first lodged a petition with the Arizona
3 Department of Transportation, but the Department refused to hold a hearing because of
4 an arbitration clause in the parties’ contracts. (Doc. 19 at ¶¶ 84-85.)³

5 On August 21, 2013, Smith filed suit in this Court. (Doc. 1.) Smith alleges
6 Chrysler violated the common-law duty of good faith and fair dealing, the federal
7 Automobile Dealers’ Day in Court Act, and various Arizona statutes protecting
8 automobile dealers. (Doc. 19 at 14-15, 19-21, 23-26.) In addition, Smith and Chrysler
9 both seek declaratory judgment on ancillary matters. (See Doc. 19 at 16-18; Doc. 48 at
10 55-56.) Smith and Chrysler have filed cross-motions for summary judgment on Smith’s
11 claims. (Doc. 165; Doc. 134.)

12
13 **IV. ANALYSIS**

14 Plaintiff’s claims arise from three different sources of legal protection governing
15 contracts. The most familiar is the common-law duty of good faith and fair dealing,
16 which Arizona law implies in every contract, *Wells Fargo Bank v. Arizona Laborers,*
17 *Teamsters and Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 490
18 ¶ 59, 38 P.3d 12, 28 (Ariz. 2002), and which Michigan law recognizes when one party to
19 a contract makes its performance a matter of its own discretion, *Burkhardt v. City*
20 *National Bank of Detroit*, 57 Mich. App. 649, 652, 226 N.W.2d 678, 680 (1975).

21 In franchise contracts between automobile dealers and manufacturers, there are
22 additional statutory protections. These additional protections are aimed at equalizing “the
23 gross disparity in bargaining power between the large automobile manufacturers and their
24

25
26 ³ As explained in a previous order, neither party seeks to enforce this arbitration
27 clause, and in any event it is invalid under Arizona and federal law. *Smith v. Chrysler*
28 *Grp. LLC*, No. CV-13-01732-PHX-NVW, 2014 WL 1577515, at *8 & n.1 (D. Ariz. Apr.
19, 2014).

1 many relatively small, retail dealers.” *Marquis v. Chrysler Corp.*, 577 F.2d 624, 635 n.21
2 (9th Cir. 1978).

3 At the federal level is the Automobile Dealers’ Day in Court Act (“Federal
4 Dealers’ Act”). 15 U.S.C. §§ 1221 *et seq.* The statute authorizes an automobile dealer to
5 sue an automobile manufacturer in federal court for damages caused by the
6 manufacturer’s failure to act in “good faith” in complying with the parties’ franchise
7 agreement or in terminating the dealer’s franchise. 15 U.S.C. § 1222. This statutory duty
8 of “good faith” is narrower than the common-law duty. Whereas common law prohibits
9 “doing anything to prevent other parties to the contract from receiving the benefits and
10 entitlements of the agreement,” *Wells Fargo*, 201 Ariz. at 490 ¶ 59, 38 P.3d at 28, the
11 statute merely prohibits “coercion, intimidation, or threats of coercion or intimidation,”
12 *see* 15 U.S.C. § 1221(e). Thus, the statute gives a federal cause of action for some of the
13 bad faith conduct that is actionable at common law.

14 Arizona statutes afford broader protection. Title 28, Chapter 10, Section 4307 of
15 the Arizona Revised Statutes authorizes an automobile dealer to sue an automobile
16 manufacturer for damages caused by “a violation of this chapter.” A.R.S. § 28-4307.
17 Because “this chapter”—Chapter 10 of Title 28—contains a multitude of specific rules,
18 the resulting duty imposed on manufacturers extends well beyond the common-law duty
19 of good faith. Importantly, Chapter 10 sets forth procedures governing a manufacturer’s
20 ability to terminate a dealer’s franchise. The manufacturer must first give written notice
21 of its intention to terminate, along with its reasons for termination, to both the dealer and
22 the Arizona Department of Transportation. A.R.S. § 28-4453(D). The dealer may then
23 demand an administrative hearing at which the manufacturer must prove good cause for
24 termination. A.R.S. §§ 28-4454(A), 28-4456(A), (C). In some cases, good cause is
25 established if, among other things, the manufacturer has given the dealer 180 days to cure
26 alleged deficiencies. *See* A.R.S. § 28-4457(D)(3).

27 These federal and state causes of action, by their terms, are available only to
28 automobile “dealers.” 15 U.S.C. § 1222; A.R.S. § 28-4307. Therefore the threshold

1 question regarding Smith's statutory claims is whether he was a "dealer." On this
2 question both parties seek summary judgment.

3 **A. Dealer or No Dealer**

4 The Federal Dealers' Act defines "automobile dealer" as "any person, partnership,
5 corporation, association, or other form of business enterprise . . . operating under the
6 terms of a franchise and engaged in the sale or distribution of passenger cars, trucks, or
7 station wagons." 15 U.S.C. § 1221(c). The Act defines "franchise" as "the written
8 agreement or contract between any automobile manufacturer engaged in commerce and
9 any automobile dealer which purports to fix the legal rights and liabilities of the parties to
10 such agreement or contract." 15 U.S.C. § 1221(b).

11 The Arizona definitions are structurally different but substantively similar. The
12 statute defines "motor vehicle dealer" by listing types: "new motor vehicle dealer," "used
13 motor vehicle dealer," etc. A.R.S. § 28-4301(22). Those types are then defined further.
14 *See, e.g.,* A.R.S. § 28-4301(25) (defining "new motor vehicle dealer"). The statute
15 defines "franchise" as "a contract between two or more persons" where (a) a commercial
16 relationship is involved, (b) the franchisee has the right to sell new motor vehicles
17 manufactured or distributed by the franchisor, (c) the franchisee, as a separate business, is
18 part of the franchisor's distribution system, (d) the operation of the franchisee's business
19 is substantially associated with the franchisor's trade name, and (e) the franchisee's
20 business substantially relies on the franchisor to supply new motor vehicles. *See* A.R.S.
21 § 28-4301(12).

22 The parties do not cite any case interpreting the word "dealer" as used in the
23 Arizona statutes, nor does the Court know of any. In contrast, courts have interpreted the
24 word "dealer" under the Federal Dealers' Act in a variety of factual contexts. These
25 cases guide the determination of whether Smith is a "dealer" under Arizona law as well
26 as federal law. *See Sell v. Gama*, 231 Ariz. 327, 327 ¶ 18, 295 P.3d 421, 425 (2013)
27 (stating Arizona will defer to federal case law construing parallel federal statute unless
28 there is good reason to depart from federal decisions).

1 In *Kavanaugh v. Ford Motor Co.*, the Seventh Circuit was presented with facts
 2 remarkably similar to the present case. 353 F.2d 710 (7th Cir. 1965). Three contracts
 3 jointly created a relationship among an automobile manufacturer (Ford), an individual
 4 (Kavanaugh), and a dealership (Dan Kavanaugh Ford, Inc.). *Id.* at 712-14. Kavanaugh
 5 was made an employee and shareholder of the dealership. *Id.* As an employee he was
 6 the dealership's "general manager" and "president" but only one of four "directors," the
 7 rest of whom represented Ford. *Id.* at 714-15 & n.7. As a shareholder he invested
 8 \$30,000 in exchange for 300 shares of the dealership's common stock, while Ford
 9 invested \$120,000 in exchange for 1200 shares of preferred stock. *Id.* at 712. At the end
 10 of each year, Kavanaugh was to buy some of Ford's remaining shares using his yearly
 11 employee bonus. *Id.* However, Ford was to retain all voting rights until Kavanaugh
 12 bought all remaining shares. *Id.* This relationship held for about four years, at the end of
 13 which the dealership's directors terminated Kavanaugh's employment and Ford canceled
 14 the shareholder arrangement. *Id.* at 714-15.

15 On those facts the Seventh Circuit held that "in legal contemplation [Kavanaugh]
 16 was an automobile dealer 'operating under the terms of a franchise' within the meaning
 17 of" the Federal Dealers' Act. *Id.* at 717-18. Given the factual similarities between that
 18 case and this one, the Seventh Circuit's reasoning is highly persuasive here and worth
 19 tracing in detail.⁴

20 **1. Determination of dealer status is not formalistic.**

21 In *Kavanaugh*, Ford took the position that the "dealer" for purposes of the Federal
 22 Dealers' Act was the dealership itself, not Kavanaugh individually. *Id.* at 715. In
 23 support of this position, Ford made two arguments. First, Ford argued that the relevant
 24 "franchise" for statutory purposes was the contract between Ford and the dealership, not

25 ⁴ Admittedly, *Kavanaugh* involved a different procedural posture. There the
 26 Seventh Circuit affirmed the district court's denial of summary judgment for the
 27 defendant, *id.* at 718, whereas here summary judgment on this issue will be granted for
 28 the plaintiff. But the procedural posture in *Kavanaugh* did not seem to affect the court's
reasoning, which is what is persuasive here in light of undisputed facts.

1 the contract between Ford and Kavanaugh or the contract between the dealership and
2 Kavanaugh. *Id.* Second, Ford argued that the dealership was a corporate entity separate
3 from both Ford and Kavanaugh, whose separateness should be recognized. *Id.* at 717.
4 The Seventh Circuit rejected both arguments.

5 As to Ford's first argument, the Seventh Circuit found that the statutory term
6 "franchise" could include more than "the document ostensibly designated as the
7 franchise" by the parties. *Id.* Thus, to ascertain "the actual relationship of the parties,"
8 the court examined all three of the contracts relevant to the transaction because each
9 constituted "an inseparable part of the mutual understanding" between the parties. *Id.*
10 The court further noted that "the circumstances attending the execution of the agreements
11 and the post-execution behavior of the parties are relevant considerations." *Id.* at 715-16.
12 In other words, the court, unsatisfied with formal labels, inquired as to the underlying
13 substance of the parties' relationship.

14 This focus on substance is necessary to effectuate the Federal Dealers' Act. The
15 whole point of giving automobile dealers statutory protection in addition to common-law
16 protection is to combat the "gross disparity in bargaining power" between dealers and
17 manufacturers. *Marquis*, 577 F.2d at 635 n.21. Absent such protection, franchise
18 agreements might become one-sided and include terms solely for the manufacturer's
19 benefit. *Id.* To determine "dealer" status solely by reference to labels in contracts over
20 which manufacturers have dominant influence would allow manufacturers to contract
21 around the statute. Congress did not intend that result. It passed the Federal Dealers' Act
22 to provide federal review "irrespective of contractual provisions." *Id.* at 633 n.15
23 (quoting H.R.Rep., No. 2850, 84th Cong., 2d Sess. (1956), *reprinted in* [1956] U.S.Code
24 Cong. & Admin.News, at 4596).

25 For similar reasons, *Kavanaugh's* focus on substance over form is even more
26 appropriate when determining "dealer" status under the Arizona statutes. The Arizona
27 legislature chose to provide automobile dealers with more robust protection than
28 Congress did. This protection includes procedural rights to notice, a good cause hearing,

1 and possibly an opportunity to cure, when faced with franchise termination. *See* A.R.S.
 2 §§ 28-4453 *et seq.* These rights evince a stronger legislative intent to guard against
 3 manufacturers' disproportionate bargaining power. Accordingly, contractual labels are
 4 even less useful when determining "dealer" status for purposes of the Arizona statutes.

5 As to Ford's second argument in *Kavanaugh*, the Seventh Circuit rejected Ford's
 6 characterization of the dealership as a distinct corporate entity in light of the "settled
 7 doctrine that the fiction of corporate entity will be disregarded whenever it has been
 8 adopted or used to evade the provisions of a statute." 353 F.2d at 717. The court found
 9 that treating the dealership as the "dealer" for purposes of the Federal Dealers' Act would
 10 effectively insulate Ford from liability under the statute because Ford controlled the
 11 dealership and would not sue itself. *Id.*

12 These same considerations apply here. Even though Smith was part owner and
 13 general manager of the dealership, Chrysler owned all the dealership's voting stock and
 14 controlled the majority of the dealership's Board of Directors. Thus, as a practical
 15 matter, the dealership would sue Chrysler only if Chrysler wanted it to. To treat the
 16 dealership as the "dealer" in these circumstances would insulate Chrysler from liability
 17 under both the Federal Dealers' Act and the Arizona statutes, since Chrysler acting as
 18 "dealer" would not sue itself acting as "manufacturer".

19 Therefore, Chrysler's contentions that the Arizona dealership was the "dealer" by
 20 virtue of the parties' contractual labels and the dealership's corporate separateness are
 21 unpersuasive.

22 Given *Kavanaugh*'s rejection of formalistic labels, the question becomes: How
 23 does one determine whether Smith was a "dealer"?

24 **2. The touchstone inquiry here is whether Smith was deemed**
 25 **"essential" to the dealership's operation.**

26 In *Kavanaugh*, after examining the substance of the parties' relationship, the
 27 Seventh Circuit concluded that Kavanaugh was not merely regarded as "someone who
 28 desired to invest in a business enterprise" or "someone being employed to manage the

1 dealership,” but was “deemed essential to the operation of the dealership.” 353 F.2d at
2 716. In reaching this conclusion the court noted several factors, most of which are
3 present in this case too. Other factors in this case also support the conclusion that Smith
4 was essential to the dealership’s operation.

5 **a. Smith applied for the dealership as an individual.**

6 The Seventh Circuit noted that Kavanaugh applied to Ford for a dealership as an
7 individual, and that Ford treated him “as an individual applicant, not as someone
8 applying on behalf of a corporation.” *Id.*

9 So too here. In Smith’s “Application for Dealer Agreement,” he applied as an
10 individual. He provided personal information such as his name, education, business
11 experience, references, financial assets and liabilities, and credit score. In response to the
12 question of who would manage the proposed dealership, he wrote “I will, Alfonzo
13 Smith.” Upon receipt of Smith’s application, Chrysler’s National Dealer Placement
14 Manager requested a “Dealer Background Report” on Smith. Chrysler thus viewed
15 Smith as an individual applicant.

16 On this point, Chrysler attempts to distinguish *Kavanaugh* by pointing out that
17 Smith sent a letter asking to be employed as the dealership’s General Manager. But that
18 is not a distinction because Kavanaugh was general manager too. 353 F.2d at 714.
19 Moreover, at oral argument Chrysler conceded that the letter sent by Smith had been
20 drafted by Chrysler.

21 **b. Chrysler entered into the arrangement with the dealership in reliance on Smith’s role.**

22 The Seventh Circuit also noted that the contract between Ford and the dealership
23 emphasized Kavanaugh’s importance in several ways. The contract was executed in
24 express reliance on the representation that Kavanaugh would be part owner of the
25 dealership and would have “full managerial authority and responsibility for the operating
26 management” of the dealership. *Id.* at 716. Indeed, the contract gave Ford the right to
27 back out if Kavanaugh were to lose his ownership interest or management position. *Id.*
28 The contract’s preamble also praised “individual businessmen” as best able to sell

1 automobiles. *Id.* And the contract gave the dealership the name “Dan Kavanaugh Ford,
2 Inc.” *Id.*

3 Here, the contract between Chrysler and the Arizona dealership similarly
4 emphasizes Smith’s importance. The contract lists Smith and Chrysler as the only
5 dealership shareholders and warrants “there will be no change affecting more than 50%
6 of the ownership interest,” nor any change in ownership interest which may affect the
7 dealership’s “managerial control,” without Chrysler’s “prior written approval.” The
8 contract also lists Smith and one other employee as the only dealership managers, states
9 Chrysler “has entered into this Agreement relying on the active, substantial and
10 continuing personal participation” of these managers, and prevents the dealership from
11 changing management “personnel” or “the nature and extent of [their] management
12 participation” without Chrysler’s “prior written approval.” The contract’s introduction
13 summarizes the point well: “[Chrysler] has entered into this Agreement in reliance upon
14 and has placed its trust in the personal abilities, expertise, knowledge and integrity of [the
15 dealership’s] principal owners and management personnel, which [Chrysler] anticipates
16 will enable [the dealership] to perform the personal services contemplated by the
17 Agreement.” The contract stops short of naming the dealership after Smith, however.

18 Chrysler attempts to downplay the importance of Smith’s role in this contractual
19 arrangement by identifying limits on his managerial authority. To that end, Chrysler cites
20 its Marketing Investment Financial and Operating Policies and Secretary-Treasurer’s
21 Guide, which required Smith to manage in certain ways and prohibited him from
22 managing in other ways. Chrysler also identifies instances where Smith needed approval
23 by the dealership’s Board of Directors before taking action, because he was only a part
24 owner and had not bought the dealership via private capitalization.

25 As an initial matter, it is not clear how these limits on Smith’s managerial
26 authority distinguish this case from *Kavanaugh*. The *Kavanaugh* opinion does not
27 discuss the limits on Kavanaugh’s managerial authority. Even so, one can infer there
28 were *some* limits. The contract between Kavanaugh and Ford set forth the dealership’s

1 “general method of operation.” 353 F.2d at 712. Kavanaugh must have been subject to
 2 Board approval because the Board fired him. *Id.* at 715. And Kavanaugh, like Smith,
 3 owned only part of the dealership. *Id.* at 712.

4 More fundamentally, the limits on Smith’s authority do not change the fact that
 5 Chrysler entered into this contractual arrangement in express reliance on Smith’s
 6 continuing role as manager and increasing role as shareholder. The whole arrangement
 7 was basically a financing device by which Smith could become the dealership’s full
 8 owner. Chrysler’s limits on Smith’s managerial authority do not change the nature of the
 9 transaction. Indeed, such limits are to be expected where, as here, the individual plays
 10 such an important role in the underlying contractual arrangement that the manufacturer
 11 expressly relies on that role when entering the arrangement with the dealership.

12 **c. At termination, Smith was a long-time manager and**
 13 **majority shareholder.**

14 In deciding that Kavanaugh was “essential” to the dealership, the Seventh Circuit
 15 did not assign any weight to the length of his tenure as general manager or the percentage
 16 of dealership shares he had acquired. Perhaps that is because neither factor carried much
 17 weight in that case. At termination, Kavanaugh had been at the dealership less than four
 18 years and had not acquired even 25% of the total shares. 353 F.2d at 712, 714-15.

19 By contrast, Smith was terminated after serving as dealership general manager for
 20 approximately ten years and after acquiring a clear majority of the dealership’s shares.⁵
 21 Thus, if anyone at the dealership was “essential” to the dealership’s operation at the time
 22 of Smith’s termination, it was Smith.

23 **d. Without Smith, Chrysler’s arrangement with the**
 24 **dealership would have been illegal.**

25 Arizona law generally prohibits an automobile manufacturer from “having an
 26 ownership interest” in a dealership,⁶ but provides an exception for manufacturers that

27 ⁵ However, because Chrysler still owned some stock, Smith had no voting stock.

28 ⁶ The statutory prohibition refers to ownership interests in a new or used “dealer,”
 whereas the statutory exception refers to owning a “dealership.” *Compare* A.R.S. § 28-

1 “temporarily” own a dealership while in a bona fide relationship with a “qualified
 2 person.” A.R.S. §§ 28-4460(A), (B)(1), (B)(1)(b). For this exception to apply, the
 3 “qualified person” must make a substantial “initial investment” in the dealership, must
 4 buy the manufacturer’s remaining ownership interest in “regular periodic payments,” and
 5 must be able to “expect to acquire and retain full and complete ownership of the
 6 dealership” within a reasonable period of time. A.R.S. § 28-4460(B)(1)(b)(i)-(v).

7 In the arrangement between Smith and Chrysler, Smith was supposed to play the
 8 role of the “qualified person.” He made a substantial initial investment in the dealership,
 9 he regularly bought portions of Chrysler’s ownership interest, and he hoped to acquire
 10 full ownership. Smith’s intended role as a “qualified person” was essential because it
 11 was necessary to prevent Chrysler’s ownership interest in the dealership from violating
 12 Arizona law.

13 For all these reasons, even viewing the evidence in the light most favorable to
 14 Chrysler, Smith played an essential role in the dealership’s operation and was a “dealer”
 15 operating under a “franchise” with Chrysler for purposes of the Federal Dealers’ Act and
 16 the Arizona statutes.

17 **B. Duty of Good Faith Under the Federal Dealers’ Act**

18 The Federal Dealers’ Act authorizes an automobile dealer, such as Smith, to sue a
 19 manufacturer for failing to act in “good faith.” 15 U.S.C. § 1222. The statute defines
 20 “good faith” as each party’s duty to “act in a fair and equitable manner toward each other
 21 so as to guarantee the one party freedom from coercion, intimidation, or threats of
 22 coercion or intimidation from the other party.” 15 U.S.C. § 1221(e).

23 The “failure to exercise good faith within the meaning of the Act has a limited and
 24 restricted meaning. . . . It does not mean ‘good faith’ in a hazy or general way, nor does it
 25 mean unfairness. The existence or nonexistence of ‘good faith’ must be determined in

26 4460(B)(1) *with* A.R.S. § 28-4460(B)(1)(b). The statute then defines both words—
 27 “dealer” and “dealership”—as meaning the same thing: a “new motor vehicle dealer or
 28 franchisee.” A.R.S. § 28-4460(E)(2).

1 the context of actual or threatened coercion or intimidation.” *Autohaus Brugger, Inc. v.*
2 *Saab Motors, Inc.*, 567 F.2d 901, 911 (9th Cir. 1978) (citation omitted). “Coercion or
3 intimidation must include a wrongful demand which will result in sanctions if not
4 complied with, and it is necessary to consider not only whether the manufacturer brought
5 pressure to bear on the dealer, but also his reason for doing so.” *Id.* (citation omitted).
6 When a termination of a franchise is involved, “there must be a ‘causal connection’
7 between the dealer’s resistance to the coercive conduct and the termination.” *Id.* “The
8 existence of coercion or intimidation depends upon the circumstances arising from each
9 particular case.” *Id.*

10 Here, Smith claims Chrysler unlawfully “coerced or intimidated” him by (1)
11 wrongfully demanding that he increase his sales numbers to a certain minimum and
12 purchase the outstanding stock in the dealership by a certain deadline or else he would be
13 subject to termination and (2) then terminating his employment and ownership interest
14 before that deadline for failing to meet the minimum sales requirement and failing to
15 purchase the outstanding stock. On Smith’s view, this one-two punch violated the
16 Federal Dealers’ Act because Chrysler “set[] an unrealistic goal” and then “selectively
17 terminate[d] one dealer for failing to meet that goal.” *Autohaus*, 567 F.2d at 912
18 (generally noting such conduct may violate Federal Dealers’ Act); *see also Marquis v.*
19 *Chrysler Corp.*, 577 F.2d 624, 635 (9th Cir. 1978) (holding evidence supported verdict of
20 bad faith under Federal Dealers’ Act where Chrysler selectively enforced minimum sales
21 requirement).

22 Chrysler denies both prongs of Smith’s theory. First, Chrysler argues that its
23 demand of higher sales and faster stock purchases was realistic and reasonable in light of
24 its contracts with Smith. Second, Chrysler argues that even if this demand was coercive,
25 there was no “causal connection” between the demand and Smith’s termination because
26 Smith was terminated for other reasons.

1 There is evidence in the record supporting each party's theory. Therefore, whether
 2 Chrysler violated the "good faith" duty of the Federal Dealers' Act is an issue of fact that
 3 cannot be resolved on summary judgment.

4 **C. Requirements Under the Arizona Statutes**

5 The Arizona statutes authorize an automobile dealer, such as Smith, to sue a
 6 manufacturer for violating Chapter 10 of Title 28, Arizona Revised Statutes, if the
 7 violation causes the dealer to suffer "pecuniary loss" or to be "otherwise adversely
 8 affected." A.R.S. § 28-4307. Smith seeks summary judgment with respect to violations
 9 of two separate sections of Chapter 10: A.R.S. §§ 28-4453 and 28-4460.

10 **1. Notice and ensuing procedural rights**

11 Chapter 10 sets forth procedures governing a manufacturer's ability to terminate a
 12 dealer's franchise. The manufacturer must first give written notice of its intention to
 13 terminate, along with its reasons for termination, to both the dealer and the Arizona
 14 Department of Transportation. A.R.S. § 28-4453(D). The dealer may then demand an
 15 administrative hearing at which the manufacturer must prove good cause for termination.
 16 A.R.S. §§ 28-4454(A), 28-4456(A), (C). In some cases, good cause is established if,
 17 among other things, the manufacturer has given the dealer 180 days to cure alleged
 18 deficiencies. *See* A.R.S. § 28-4457(D)(3).

19 It is undisputed that Chrysler did not give notice of its intention to terminate its
 20 franchise as described in A.R.S. § 28-4453(D) and that therefore Smith was unable to
 21 exercise his ensuing procedural rights, such as a demand for a good cause hearing.
 22 Therefore summary judgment will be granted in favor of Smith as to his claim that
 23 Chrysler violated A.R.S. § 28-4453.

24 **2. Chrysler's ownership interest in the dealership**

25 Chapter 10 generally prohibits an automobile manufacturer from "having an
 26 ownership interest" in a dealership, but provides an exception for manufacturers that
 27 "temporarily" own a dealership while in a bona fide relationship with a "qualified
 28 person." A.R.S. §§ 28-4460(A), (B)(1), (B)(1)(b). For this exception to apply, the

1 “qualified person” must make a substantial “initial investment” in the dealership, must
2 buy the manufacturer’s remaining ownership interest in “regular periodic payments,” and
3 must be able to “expect to acquire and retain full and complete ownership of the
4 dealership” within a reasonable period of time. A.R.S. § 28-4460(B)(1)(b)(i)-(v).

5 In the arrangement between Smith and Chrysler, Smith was supposed to play the
6 role of the “qualified person.” He made a substantial initial investment in the dealership,
7 he regularly bought portions of Chrysler’s ownership interest, and he hoped to acquire
8 full ownership.

9 In reality, Smith was not a “qualified person” because he was not able to “expect”
10 to acquire full ownership of the dealership. Smith’s contract with the dealership
11 contained an at-will employment clause that purported to give Chrysler, as the
12 dealership’s sole voting stockholder, the “absolute right” to remove Smith as a Director
13 and employee. Chrysler used this at-will clause to terminate Smith’s employment and
14 ownership interest in the dealership. Indeed, Chrysler has stressed the importance of this
15 at-will clause throughout its summary judgment motion. (*See, e.g.*, Doc. 134 at 1, 2, 4, 5,
16 8, 12, 13, 14, 15, 16, 17.). If, as Chrysler contends, this clause actually rendered Smith’s
17 employment and ownership interest terminable at the will of the entity that controlled the
18 dealership’s voting, Smith could not have “expected” to acquire full ownership, in which
19 case he was not a “qualified person,” in which case Chrysler’s ownership interest in the
20 dealership violated A.R.S. § 28-4460. Thus, Chrysler’s exercise of the at-will clause
21 removes Chrysler from the “qualified person” safe harbor that its contracts were
22 otherwise designed to invoke.

23 The parties dispute whether this violation of A.R.S. § 28-4460 harmed Smith but
24 do not adequately brief the issue. Chrysler says Smith was not harmed because the
25 statute by its terms is aimed at preventing a manufacturer from “compet[ing] with or
26 unfairly discriminat[ing] among its dealers.” A.R.S. § 28-4460(A). On Chrysler’s view,
27 the statute prohibits a manufacturer from owning a dealership in order to protect dealers
28 in *other* dealerships. But Smith was a Chrysler dealer too, and Chrysler arguably

1 “competed” with him in the extreme by exercising the at-will clause in a way that
 2 forfeited his dealership. On this record and in view of the cursory briefing on the issue, it
 3 is debatable whether Chrysler’s violation of A.R.S. § 28-4460 caused or contributed to
 4 Smith’s injury. That causation question must be left for trial.

5 **D. Common-Law Duty of Good Faith and Fair Dealing**

6 Arizona law implies a duty of good faith and fair dealing in every contract, *Wells*
 7 *Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Local No. 395 Pension*
 8 *Trust Fund*, 201 Ariz. 474, 490 ¶ 59, 38 P.3d 12, 28 (Ariz. 2002), and Michigan law
 9 recognizes the duty when one party to a contract makes its performance a matter of its
 10 own discretion, *Burkhardt v. City National Bank of Detroit*, 57 Mich. App. 649, 652, 226
 11 N.W.2d 678, 680 (1975).

12 One of the contracts at issue here—namely, the contract between Chrysler and
 13 Smith—contains a Michigan choice-of-law clause. The parties dispute whether Michigan
 14 law or Arizona law supplies the common-law duty of good faith and fair dealing that
 15 governed their relationship.⁷

16 The Court need not decide which law governs here because neither would permit
 17 summary judgment. As stated above in Part IV.B, Smith and Chrysler have advanced
 18 different theories as to why Smith was terminated, and there is evidence in the record
 19 supporting each party’s theory.

22 ⁷ This is a complex question. The Michigan choice-of-law clause was present in
 23 only one of several contracts that formed the arrangement between Chrysler and Smith.
 24 Thus, a threshold issue is whether, or to what extent, Smith’s bad faith claims arise out of
 25 the contract that the choice-of-law clause purports to govern. Further, even to the extent
 26 Smith’s claims arise out of that contract, Arizona law on good faith and fair dealing may
 27 apply despite the choice-of-law clause if (1) the particular issue is not “one which the
 28 parties could have resolved by an explicit provision in their agreement” and (2)
 application of Michigan law would be contrary to Arizona’s “fundamental policy.” See
Swanson v. Image Bank, Inc., 206 Ariz. 264, 267, 77 P.3d 439, 442 (2003) (quoting
 Restatement (Second) of Conflict of Laws § 187 (1971)).

1 Chrysler misconstrues *White v. AKDHC, LLC*, 664 F. Supp. 2d 1054 (D. Ariz.
2 2009). Chrysler quotes the case for the broad proposition that “a termination without
3 cause does not breach the implied covenant of good faith and fair dealing.” *Id.* at 1065.
4 The court’s actual statement was expressly limited to the context of a “pure at-will
5 employment contract”:

6 In the context of a pure at-will employment contract with no
7 agreed-to benefits and no promise of continued employment
8 or tenure, a termination without cause does not breach the
implied covenant of good faith and fair dealing.

9 *Id.* Moreover, the court immediately clarified that, even in the context of at-will
10 employment contracts, conduct other than termination could violate good faith and fair
11 dealing:

12 However, a viable claim for breach of the implied covenant
13 may lie if a plaintiff is alleging that conduct other than the
14 termination itself breached the covenant.

15 *Id.*

16 This case involves more than a “pure at-will employment contract” because Smith
17 was not just the dealership’s employee but also a part owner contractually obliged to buy
18 dealership stock until becoming full owner. Accordingly, Smith claims not only that he
19 was fired unlawfully but also that he was deprived of his reasonable expectation of
20 acquiring full ownership. (Doc. 19 at ¶ 140.) *White* does not preclude Smith’s claim.

21 Therefore, whether Chrysler violated the common-law duty of good faith and fair
22 dealing is an issue of fact that cannot be resolved on summary judgment.

23 **E. Declaratory Judgment**

24 Smith’s claims for declaratory judgment (Doc. 19 at ¶¶ 78-97) and Chrysler’s
25 counterclaims for declaratory judgment (Doc. 48 at ¶¶ 31-43) are largely misplaced. The
26 purpose of declaratory judgment is to adjudicate rights or obligations in cases where the
27 dispute “has not reached the stage at which either party may seek a coercive remedy” or
28

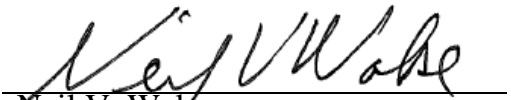
1 where “a party who could sue for coercive relief has not yet done so.” 10B Charles Alan
2 Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 2751 (3d ed. 1998).

3 Here, Smith seeks damages for claims arising under federal and state statutes and
4 common law. Many of the parties’ requests for declaratory judgment are unnecessary in
5 light of the Court’s rulings in this order, and the other requests will probably be rendered
6 unnecessary by a resolution of Smith’s remaining claims on the merits. Any unresolved
7 requests for declaratory judgment can be addressed at trial. Thus, there is no benefit to
8 granting or denying declaratory judgment at this stage.

9 IT IS THEREFORE ORDERED that Plaintiff’s Motion for Summary Judgment on
10 Liability (Doc. 165) is granted in that (1) Smith was an “automobile dealer” for purposes
11 of 15 U.S.C. § 1222 and a “dealer” for purposes of A.R.S. § 28-4307 and (2) Chrysler is
12 liable to Smith for whatever damages he incurred as a result of Chrysler’s violations of
13 A.R.S. §§ 28-4453 and 28-4460. The Motion is otherwise denied.

14 IT IS FURTHER ORDERED that Defendant’s Motion for Summary Judgment
15 (Doc. 134) is denied.

16 Dated this 24th day of March, 2016.

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20 Neil V. Wake
United States District Judge
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